

# JOHNSON & JOHNSON MEDICAL PTY LIMITED

## STANDARD TERMS AND CONDITIONS OF SALE

### 1 APPLICATION OF STANDARD TERMS

- 1.1 Subject to any variation under clause 26.4:
- (a) the Contract will be on these Standard Terms to the exclusion of all other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document); and
  - (b) no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 1.2 JJMT may revise these Standard Terms at any time by prior notice to the Customer and those revised terms will apply to all Orders placed by the Customer after such a notice has been given.

### 2 ORDERS

- 2.1 Each order for Goods made by the Customer to JJMT shall be deemed to be an offer by the Customer to purchase Goods subject to these Standard Terms until it is accepted by JJMT. JJMT may, in its discretion refuse to accept any order. If an order is not accepted by JJMT within 7 days of it being placed by the Customer, the Customer may withdraw the order by written notice to JJMT.
- 2.2 In exceptional circumstances (including, without limitation, the Goods being recalled, or the Goods being no longer available due to events beyond JJMT's reasonable control), JJMT may cancel the acceptance of any Order for Goods at any time before delivery. The Customer may only cancel an Order for Goods with JJMT's prior written consent.
- 2.3 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by the terms and conditions set forth in these Standard Terms.
- 2.4 When an Order is recorded in JJMT's order processing system and JJMT has:
- (a) generated a track number on its system; and
  - (b) notified the Customer of acceptance of the Order by email,
- a contract will form between the parties. A separate Contract is formed in relation to each Order.
- 2.5 The Customer can obtain the relevant track number associated with an Order by requesting it from JJMT customer services.
- 2.6 To ensure safe handling and minimise breakages in transit, some Goods are only supplied in "minimum order" packaging. JJMT will notify the Customer of any minimum order packaging requirements prior to or at the time an order is placed for those Goods. Orders for less than the specified "minimum order" quantity will be rounded to the nearest "minimum

order" quantity, and the Customer will be required to pay for all goods supplied, with such amount being deemed to be the "Goods" under the Contract.

- 2.7 JJMT may withhold delivery of Goods (whether or not an Order has been accepted) for non-payment of any amounts due and payable or any material breach of these Standard Terms by the Customer.

### 3 CANCELLATION

In the event that JJMT is unable to deliver part or all of the Goods the subject of an Order it has accepted (e.g. due to unforeseen circumstances or events beyond the reasonable control of JJMT), JJMT may:

- (a) if available, offer the Customer alternative comparable Goods for sale; or
- (b) if no comparable Goods are available for sale or the Customer does not wish to accept the comparable Goods offered for sale by JJMT, allow the Customer to choose between:
  - (i) placing the affected order (or relevant part of it) on hold until JJMT is able to supply the affected Goods; or
  - (ii) cancel the affected part of the order (or the whole order where all Goods the subject of the Order are affected).

### 4 PRICES

- 4.1 Goods will be invoiced by JJMT at the price specified:
- (a) on the then current price list made available by JJMT to the Customer;
  - (b) over the phone to the Customer for phone orders;
  - (c) on JJMT's ordering system accessible by the Customer (such as J&J Customer Connect);
  - (d) for Goods supplied on consignment to the Customer, the price specified in (a) or (b) of this clause 4.1 that applied at the time that the Goods are used, consumed or sold by the Customer; or
  - (e) for Goods loaned to the Customer, the price specified in (a) or (b) of this clause 4.1 that applied at the time that the loaned Goods are used or consumed by the Customer.
- 4.2 Prices for Goods may change however such changes will not apply retrospectively to orders a Customer has already placed, other than for consigned or loaned goods for which the price payable will be the price as at the date the relevant Goods are used, sold or consumed (as applicable). JJMT will update its price lists and ordering systems when a price changes. The Customer agrees to check those price lists and systems before placing an order or deciding

to sell, use or consume consigned or loaned Goods. JJMT will inform the Customer if it has inserted incorrect pricing in a purchase order for any Goods prior to acceptance of the Order.

**4.3 GST:**

- (a) All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.
- (b) Where a payment or consideration for the Goods is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by JJMT to the Customer.
- (c) Payment of GST must be made at the same time as payment is due on the invoice for the Goods.
- (d) JJMT must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.

**5 PAYMENT**

- 5.1 Goods will be invoiced on the date they are dispatched by JJMT to the Customer, other than for Goods supplied on consignment or on loan, which will be invoiced when they are sold, used or consumed (as applicable) by the Customer.
- 5.2 Payment is to be made to JJMT by the Customer on the 20th day of the month following the invoice.
- 5.3 Payment must be made to JJMT without set-off or deduction of any kind.
- 5.4 The Customer will pay JJMT interest on all overdue amounts calculated daily from the due date for payment at the rate which is 4% above the Reserve Bank of Australia's Interbank Overnight Cash Rate.

**6 DELIVERY TERMS AND CHARGES**

- 6.1 Delivery occurs when possession or control of the Goods passes to the Customer, its agent or carrier, at the Customer's premises or any other location agreed between the Customer and JJMT.
- 6.2 Subject to clause 6.5, a receipt for the Goods signed on behalf of the Customer will be conclusive evidence of delivery.
- 6.3 Any dates specified by JJMT for delivery of the Goods are intended to be an estimate only. Time for delivery is not of the essence.
- 6.4 In some circumstances (for example, due to limited stock availability or stock being on back-order), JJMT may need to deliver the Goods the subject of an order across more than one delivery. JJMT will inform the Customer if more than one delivery will be required and provide the Customer with updates on those deliveries if requested by the Customer.
- 6.5 Without limiting any rights of the Customer contemplated by clause 20.3 or at law, the Customer must notify JJMT within 10 days of delivery of any short fall in Goods delivered.

6.6 Subject to clause 6.7, all Orders in excess of \$250 will be free into store throughout Australia. Orders of \$250 or less may incur a \$65 handling and administration fee.

6.7 If the Customer requires or requests express freight of Goods for purchase, loan or consignment or any non-standard form of delivery, the Customer will be responsible for the freight/delivery costs and such costs will be added to the invoiced costs and be payable at the same time.

**7 RISK/TITLE**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Customer at the time when the Goods are delivered to the Customer.
- 7.2 Title in the Goods passes to the Customer when JJMT has received (in cash or cleared funds) full payment for the price for the Goods and all applicable charges for that order of Goods.

**8 RECOVERY OF GOODS**

- 8.1 Until title of the Goods has passed to the Customer, the Customer must:
  - (a) hold the Goods on behalf of JJMT;
  - (b) store the Goods (at no cost to JJMT) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as JJMT's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (d) maintain the Goods in satisfactory condition insured on JJMT's behalf for their full price against all risks to the reasonable satisfaction of JJMT. On request the Customer shall produce the certificate of insurance to JJMT.
- 8.2 Where payment for loaned or consigned Goods is overdue in whole or in part, JJMT or its nominee may (without prejudice to any of its other rights) recover and / or resell those Goods and may enter the Customer's premises or any other place where the Goods are stored by the Customer for that purpose. The Customer grants to JJMT a licence and authority to enter the Customer's premises to recover the relevant loaned or consigned Goods.
- 8.3 The Customer may resell the Goods before title has passed to it solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and
  - (b) any such sale shall be a sale of JJMT's property on the Customer's own behalf and the Customer shall hold the proceeds on account for JJMT.

**9 PPSA**

- 9.1 If the Contract is or contains a security interest for the purposes of the PPSA, the Customer agrees to do anything lawful (such as obtaining consents, signing and producing documents, getting documents

completed and signed and supplying information) which JJMT reasonably considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling JJMT to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by JJMT; or
- (c) enabling JJMT to exercise rights in connection with the security interest.

## **10 RETURNS**

- 10.1 Without limiting any statutory rights of the Customer contemplated under clause 20.3, JJMT will accept return of the Goods if the Customer complies with JJMT's returns policy applicable to the Goods at the time the Goods were ordered and available at <https://www.jnjmedtech.com/en-AU/service-details/trading-terms-return-policy>.
- 10.2 The Customer is responsible for all costs of delivery applicable to the return of the Goods to JJMT, unless the Goods are defective.
- 10.3 In the event the Customer returns non-defective Goods, JJMT reserves the right to charge a restocking fee on Goods returned, at a rate of 15% of invoiced cost.

## **11 STORAGE, HANDLING AND USE OF GOODS**

- 11.1 It is the Customer's responsibility:
  - (a) to ensure that it and its Personnel comply with all applicable health and safety regulations and therapeutic goods requirements and other appropriate steps taken in relation to the storage, handling, sale and use of the Goods once they are delivered to the Customer; and
  - (b) where information is supplied to the Customer on potential hazards relating to the Goods, to bring such information to the attention of its Personnel, sub-contractors, visitors and customers.
- 11.2 Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of Goods into storage.
- 11.3 Where Goods are consigned or loaned pursuant to clauses 15 or 16, the Customer grants to JJMT an irrevocable licence and authority (following reasonable notice) to enter the Customer's premises to access the consignment or loaned inventory to retrieve, inspect, count or scan the Goods in accordance with JJMT internal procedures and policy.

## **12 COUNTERFEIT GOODS**

- 12.1 The Customer acknowledges that there are safety and regulatory concerns in relation to medical products that are counterfeit or not approved or packaged for sale in the country of the Customer. To safeguard the welfare of patients and the reputation of JJMT, its

Affiliates and JJMT's and its Affiliates' products, the Customer warrants it will only purchase JJMT's medical devices from JJMT or its authorised distributors while the Customer has an active account with JJMT.

- 12.2 The Customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of JJMT attached to or placed upon the Goods.
- 12.3 JJMT may refuse to continue to supply its products to the Customer if JJMT considers on reasonable grounds that the Customer has breached this clause 12. Any such refusal will be without prejudice to JJMT's rights to claim damages and indemnities from the Customer.

## **13 USE AND RESALE OF GOODS**

- 13.1 Goods purchased in Australia may only be used or resold in Australia. Unless otherwise agreed between the parties in writing and signed, the Customer agrees that it is buying the Goods for its own internal use only and not for resale to any third party.
- 13.2 Where the Customer supplies Goods to any other person in the course of trading, the Customer must not give or make any undertaking, assertion or representation in relation to the Goods without JJMT's prior written approval. In any event, the Customer must not make any representations or advertise the Goods in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements and must not make any representations or advertise the Goods in a way which promotes or suggests the unauthorised use of medical devices.

## **14 PRODUCT RECALLS**

In the event that any of the Goods are subject to a recall, field safety alert or hazard alert by either: (i) JJMT; or (ii) any governmental agency or regulatory authority, the Customer will take all reasonable steps to assist with (including identification of any party to whom the Goods have been supplied by the Customer), and will comply with any reasonable directions given by JJMT, in respect of such matter.

## **15 CONSIGNMENT OF GOODS**

- 15.1 Subject to JJMT's prior written confirmation and agreement (including the Maximum Quantity of Goods), JJMT agrees to consign to the Customer the Goods specified by the Customer in an Order for consignment of Goods provided that the number of Goods required by the Customer in the Order will not result in the Customer having possession of more than the Maximum Quantity of Goods.
- 15.2 For the avoidance of doubt, risk and title in the Goods supplied to the Customer on a consignment basis passes to the Customer in accordance with clause 7.
- 15.3 The Customer must, in respect of Goods consigned to the Customer by JJMT:

- (a) hold the Goods on behalf of JJMT;
  - (b) store the Goods (at no cost to JJMT) on the Customer's premises separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as JJMT's property;
  - (c) store each Good according to its labelling and other manufacturer conditions supplied with the Good;
  - (d) consume the Goods on a first-expiring, first-out basis for Goods that have an expiration date;
  - (e) maintain the Goods in satisfactory condition;
  - (f) as soon as practical after Goods have been used, consumed, lost or damaged place a purchase order with JJMT for such Goods including the relevant code and quantity; and
  - (g) indemnify JJMT for any loss or damage of the Goods while they are in possession of the Customer, except to the extent the relevant loss or damage was caused, or contributed to, by JJMT.
- 15.4 The Customer may resell the Goods before title has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and
  - (b) any such sale shall be a sale of JJMT's property on the Customer's own behalf and the Customer shall hold the proceeds on account for JJMT.

## 16 LOANED EQUIPMENT

- 16.1 Subject to clause 16.3 and JJMT's prior written confirmation and agreement (including the Maximum Quantity of Goods), JJMT will loan to the Customer the Goods specified by the Customer in an Order for the loan of Goods provided that:
- (a) the number of Goods required by the Customer in the Order will not result in the Customer having possession of more than the Maximum Quantity of Goods;
  - (b) title in the Goods remains vested with JJMT; and
  - (c) risk in the Goods passes to the Customer in accordance with clause 7.
- 16.2 The Customer must, in respect of the Goods loaned to the Customer by JJMT:
- (a) for all procedures other than emergency trauma procedures, provide booking information to JJMT at least 5 business days prior to the procedure date for which the Goods are required. JJMT may charge a \$95 fee for any loan bookings not made within the timeframe referred to above;
  - (b) store the Goods (at no cost to JJMT) on the Customer's premises;

- (c) store each Good according to its labelling and other manufacturer conditions supplied with the Good;
- (d) maintain the Goods in satisfactory condition;
- (e) as soon as practical after any Goods comprising the relevant loan kit have been sold, used, consumed, lost or damaged:
  - (i) notify JJMT of the relevant Goods that have been sold, used, consumed, lost or damaged;
  - (ii) place a purchase order with JJMT for such Goods including the relevant code and quantity; and
  - (iii) pay for the Goods the subject of that purchase order in accordance with the payment terms of these Standard Terms;
- (f) unless the Customer has paid for any lost or damaged Goods under clause 16.2(e), indemnify JJMT for any loss of, or damage to, Goods caused by the Customer, its employees, contractors or agents while they are in possession of the Customer, except to the extent the relevant loss or damage was caused, or contributed to, by JJMT; and
- (g) unless the Customer has notified JJMT of any changes to the scheduled procedure date and JJMT has agreed to extend the loan period, return the Goods loaned no later than 2 business days after the scheduled procedure date.

- 16.3 The Customer acknowledges the opportunity cost to JJMT and third parties associated with the loan of Goods (which may be in short supply for loans relative to demand) to the Customer. JJMT may charge a fee of:

- (a) \$250 if the Customer returns the loaned Goods unused (excluding any loaned Goods provided in support of JJMT consignment stock); and
- (b) \$200 per day for each day up to and including the day of return for loaned Goods returned after the time in clause 16.2(g).

## 17 SINGLE USE PRODUCTS

The Customer acknowledges that a Single-Use Product may be used once only and no right or licence is conveyed with respect to such Single-Use Products beyond the right to use the products once and only once.

## 18 CEASING SUPPLY

- 18.1 JJMT may cease to supply Goods on a consignment or loan basis to the Customer on 14 days written notice.
- 18.2 Upon cessation of supply of the Goods or termination of any continuing consignment or loan arrangements with JJMT, the Customer must:
- (a) in respect of Goods supplied to the Customer under consignment arrangements with JJMT,

reconcile all stock units by using either or both of the following options:

- (i) return consignment items: unopened and undamaged packages with original ship units may be returned for reduction against the consignment stock level; and/or
  - (ii) purchase consignment items: Orders must be issued for all unreturned Goods, including any lost, damaged, stolen or missing Goods for which an Order has not already been issued by the Customer; and
- (b) in respect of Goods supplied to the Customer under loan arrangements with JJMT, at JJMT's election:
- (i) return the Goods to JJMT at the Customer's cost; or
  - (ii) permit JJMT to collect the Goods in the Customer's possession or control.
- 18.3 The Customer must use all reasonable endeavours to assist JJMT to exercise its right under 18.2(b)(ii).

## 19 INDEMNITY

To the extent permitted by law, the Customer indemnifies JJMT, its Affiliates and Personnel against any cost, expense, damage, judgment or loss incurred JJMT as a result of, or in connection with, any third party claim, demand or cause of action JJMT in relation to or arising from:

- (a) a breach of the Contract by the Customer; or
  - (b) any negligent or unlawful act or omission or wilful misconduct by the Customer, or its Personnel,
- except to the extent that such cost, expense, damage, judgment or loss is caused, or contributed to, by JJMT, its Affiliates or its Personnel.

## 20 WARRANTIES AND STATUTORY RIGHTS

- 20.1 Other than as specifically set out in these Standard Terms, all warranties implied by statute or law are excluded to the full extent permitted by law. Nothing in these Standard Terms limits any rights of a party at law (including under the ACL) which cannot be limited or excluded by law or by agreement.
- 20.2 JJMT warrants that, if any of the Goods are therapeutic goods for the purposes of the *Therapeutic Goods Act 1989* (Cth), such goods are registered, listed or included (as the case may be) on the Australian Register of Therapeutic Goods.
- 20.3 If the Customer is a Consumer at the time of supply of the Goods, statutory guarantees apply to that supply that cannot be excluded under the ACL. If that is the case, the Customer is entitled to a replacement or refund for a major failure (as defined under the ACL) and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable

quality and the failure does not amount to a major failure.

- 20.4 Each party warrants that it will comply with applicable laws.

## 21 LIMITATION OF LIABILITY

- 21.1 To the extent permitted by law, a failure of JJMT to comply with a statutory guarantee under the ACL for a supply under the Contract (other than a guarantee under section 51, 52 or 53 of the ACL) which may not be excluded, restricted or modified by agreement is limited to one or more of the following:
- (a) for a supply of goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and
  - (b) for a supply of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 21.2 To the extent permitted by law, and to the extent that clause 21.1 does not apply, JJMT limits its liability for loss or damage suffered or incurred by the Customer as a result of JJMT's negligence, and any breach of a warranty or condition under the Contract, to one or more of the following:
- (a) for a supply of goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and
  - (b) for a supply of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.
- 21.3 To the extent permitted by law and subject to clause 21.4, the Customer's liability to JJMT for loss or damage incurred by JJMT as a result of the Customer's negligence, and any breach of a warranty or condition under the Contract, is limited to the price payable for the Goods supplied to the Customer under the Contract.
- 21.4 Clause 21.3 does not apply:
- (a) to limit the indemnity in clause 19; or

- (b) in respect of any third party claims made against JJMT, its Affiliates or its or their Personnel arising from:
  - (i) breach of the Contract by the Customer, including any breach of an obligation of confidentiality or privacy under clause 24;
  - (ii) negligence of the Customer or its Personnel;
  - (iii) any unlawful conduct of the Customer or its Personnel;
  - (iv) any wilful misconduct by the Customer or its Personnel; or
  - (v) any use of Goods by the Customer or its Personnel other than for their intended purpose (including any off-label use, use other than as permitted by law or use other than in accordance with directions for use or instructions applicable to the Goods).

21.5 To the extent permitted by law, neither party is liable to the other for any Consequential Loss.

## 22 INTELLECTUAL PROPERTY

- 22.1 The Customer is not permitted to use any of JJMT's or its Affiliates' intellectual property for any purpose without JJMT's or any of its Affiliates' prior written consent.
- 22.2 No right, title, interest or licence in any of JJMT's or its Affiliates' intellectual property is granted to the Customer under the Contract.

## 23 FORCE MAJEURE

The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

## 24 CONFIDENTIALITY AND PRIVACY

- 24.1 The Customer shall keep in confidence and shall not, without securing JJMT's prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:
  - (a) to its employees or representatives requiring the information for the purposes of the Order, provided they are made aware of these restrictions; or
  - (b) if the Customer is required to do so by law or by a stock exchange (except this does not permit the Customer to disclose any information of the kind referred to in section 275(1) of the PPSA unless section 275(7) of the PPSA applies); or

- (c) if the Customer is required to do so in connection with legal proceedings relating to the Goods or the Contract.

24.2 The Customer must ensure that it and its Personnel comply with the *Privacy Act 1988* (Cth) with respect to the collection, use, disclosure, handling or retention of Personal Information in connection with the Goods or this Contract as well as any other relevant privacy laws or regulations.

## 25 DISPUTE RESOLUTION

- 25.1 Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.
- 25.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).

## 26 GENERAL

- 26.1 (**notices**) Notices, consents and other communications in connection with the Contract must be in "writing" and hand-delivered or sent by pre-paid post to the other party's representative identified in the Contract. Notices take effect as follows:
  - (a) hand-delivery – at the time the delivery is made; and
  - (b) notices sent by pre-paid post – one business day after posting.
- 26.2 (**assignment**) The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of JJMT.
- 26.3 (**no exclusivity**) The relationship between the parties is not one of exclusivity.
- 26.4 (**waiver/amendment**) Subject to clause 1.2, the terms of these Standard Terms may only be amended by agreement of the parties in writing which specifically refers to this clause 26.4. Any variation to these Standard Terms or representations about the Goods which do not satisfy this clause 26.4 shall have no effect. A waiver of rights under the Contract by a party shall not be deemed a waiver of any subsequent or ongoing rights of that party.
- 26.5 (**exercise of rights**) A party may exercise a right, remedy or power in any way that party considers appropriate.
- 26.6 (**survival**) Clauses 5, 7.2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27 and 28 survive termination or expiry of the Contract together with any other term which by its nature is intended to do so.
- 26.7 (**severability**) If the whole or any part of a provision of these Standard Terms is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these Standard Terms has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Standard Terms or is contrary to public policy.
- 26.8 (**no partnership**) Nothing contained or implied in these Standard Terms or the Contract will create a joint

venture, partnership or principal and agency relationship between the parties and neither party will represent that it is the joint venturer, the partner, principal or the agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.

- 26.9 (**termination**) A party may terminate the Contract if the other party materially breaches these Standard Terms and the breach cannot be remedied, or if the breach can be remedied but that other party fails to remedy the breach within 10 business days of notice by the first party to remedy the breach. JJMT may terminate the Contract if, in JJMT's reasonable opinion, an act or omission by the Customer damages, or is likely to damage, JJMT's reputation (this right of termination does not apply where the damage to JJMT's reputation is directly due to the breach of this Contract or negligence of JJMT), or the Customer or JJMT undergoes a change of control. Termination or expiry of the Contract does not affect any accrued rights or remedies of either party.
- 26.10 (**PPSA notice**) Neither party need give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 27 (**governing law**) The laws of the NSW will govern the Contract and the parties submit to the non-exclusive jurisdiction of the courts of NSW.

## 28 INTERPRETATION

- 28.1 In these Standard Terms, the following words have the following meanings:

"**ACL**" means the Australian Consumer Law.

"**Affiliate**" has the meaning given to the term "related body corporate" in the *Corporations Act 2001* (Cth).

"**Confidential Information**" means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to JJMT's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

"**Confirmation Letter**" means the written confirmation from JJMT to Customer that it offers consignment or loaned Goods on the terms set out in these Standard Terms.

"**Consequential Loss**" means:

- (a) special, indirect or consequential loss;
  - (b) loss of revenue;
  - (c) loss of profits or savings;
  - (d) loss of opportunity;
  - (e) loss of bargain;
  - (f) damage to credit rating; and
  - (g) loss in connection with claims made by third parties,
- but does not include any Direct Loss, unless the Direct Loss falls within any of the categories of loss listed in paragraphs (b) to (g) of this definition.

"**Consumer**" has the meaning given in section 3 (titled "Meaning of consumer") of the ACL.

"**Contract**" means the contract for the supply of Goods between JJMT and the Customer on these Standard Terms formed in accordance with clause 2.4.

"**Customer**" means the person(s), firm or company who purchases the Goods from JJMT.

"**Direct Loss**" means loss or damage which arises naturally (according to the usual course of things) from the relevant event.

"**Goods**" means any goods agreed in the Contract to be supplied to the Customer by JJMT.

"**JJMT**" means Johnson & Johnson Medical Pty. Ltd (ABN 85 000 160 403).

"**Maximum Quantity of Goods**" means the maximum quantity of Goods which JJMT will consign or loan to Customer (as set out in the Confirmation Letter).

"**Order**" means an order by the Customer:

- (a) to purchase Goods from JJMT; or
  - (b) for Goods to be supplied by JJMT under consignment or a loan in accordance with clauses 15 or 16 respectively,
- as applicable, however made.

"**Personal Information**" has the meaning given in the *Privacy Act 1988* (Cth).

"**Personnel**" of a party includes an employee, servant, agent, officer or director of that party.

"**PPSA**" means the Personal Property Securities Act 2009 (Cwlth).

"**Single-Use Product**" means any product sold by JJMT that is labelled "For Single Use" or "Single Use Only" or "Not For Re-Use" or with language similarly indicating that the product is intended to be used once only.

"**Standard Terms**" means the terms and conditions set out in this document.

- 28.2 (**include**) The verb "include" (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and the words "including", "for example" or "such as" do not limit what else is included.
- 28.3 (**person**) The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency.
- 28.4 (**successors**) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 28.5 (**singular includes plural**) The singular includes the plural and vice versa.
- 28.6 (**headings**) all headings in these Standard Terms are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Standard Terms.

28.7 (**legislation**) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

28.8 (**time**) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.